

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION.

MDL Docket No. 1332

Hon. J. Frederick Motz

This Document relates to:

*Burst.com, Inc. v.
Microsoft Corp.,*

Civil Action No JFM-02-cv-2952

**BURST'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR LEAVE
TO FILE A FIRST AMENDED AND SUPPLEMENTAL COMPLAINT**

Plaintiff Burst.com, Inc. ("Burst") submits this Memorandum in Support of its Motion for Leave to File First Amended and Supplemental Complaint.

Motions to amend are freely granted by the court when justice requires. Rule 15(a) Fed.R.Civ.P. In relevant part, Rule 15(a) provides "a party may amend [his] pleading only by leave of court or written consent of the adverse party; and leave shall be freely given when justice so requires."

The purpose underlying Rule 15(a) is to provide maximum opportunity for each claim to be decided on its merits rather than on procedural technicalities. *See* 6 C. Wright & A. Miller, *Federal Practice & Procedure* § 1471 (1971).

These factors strongly support the granting of Plaintiff's motion here. Plaintiff seeks to amend the complaint to more particularly identify the asserted antitrust claims that have been in the case from the beginning. It seeks to specifically identify new products that Defendant Microsoft has introduced into the marketplace that infringe Burst's patents and incorporate its

misappropriated trade secret information in the same manner that the Corona products identified in the original complaint infringed Burst's intellectual property rights. Finally, the amended complaint updates certain allegations based on both the discovery that has occurred and other marketplace events since the filing of the original complaint.

Though changes have been made throughout the complaint, the primary changes consist of (1) dropping the claim of an independent Section 1 violation that damaged Burst based on the agreement of July 18, 1997 between RealNetworks and Microsoft; (2) adding a claim that Intel and Microsoft entered an anticompetitive market division agreement that both violated Section 1 of the Sherman Act and damaged Burst; and (3) makes clear that Microsoft's new Windows Media 10 Series and related products are included in the accused products.

None of these changes alter the fundamental nature of the case, and Microsoft has long known that Burst's complaint encompasses the facts that support these changed allegations. The case has not yet been set for trial. The alterations in the antitrust claims will require no new discovery; the new patent allegations will require only a brief extension of approximately 60 days to complete patent discovery that has already been initiated with Burst's Seventh Request for the Production of Documents.

Microsoft will not be prejudiced in any fashion by the granting of this motion. Therefore, Plaintiff respectfully requests that the Court grant it leave to file the attached First Amended and Supplemental Complaint.

DATED: September 10, 2004

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By /s/
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PROOF OF SERVICE

I am employed in the State of California, County of San Francisco. I am over 18 years of age and am not party to the within action. My business address is One Market, Spear Tower, Suite 2200, San Francisco, California 94105.

On September 10, 2004, I served BURST'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE A FIRST AMENDED AND SUPPLEMENTAL COMPLAINT upon counsel named below as indicated:

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Executed this 10th day of September, 2004.

/s/
Janine DeAndre